**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

TESTAMENTARY INTESTATE JURISDICTION

CHAMBER SUMMONS NO.1278 OF 2004

IN

**TESTAMENTARY SUIT NO. 78 OF 1994**

IN

TESTAMENTARY PETITION NO. 156 OF 1994

Dr. Feroze Homi Duggan .. Plaintiff

vs.

Jean N. Duggan .. Defendant.

Mr. H.J. Thakker i/by Soloman & Co.
for the plaintiff.
Mr. D.V. Merchant with Mr. Ruchir Tolat
i/by L.C. Tolat for the defendant.

**CORAM : S.U.KAMDAR, J.**

**DATE : 16th June,** 2005.

P.C.

The present application has been taken out for striking out the amendment which has been carried out pursuant to an order passed by the appeal court on 24.6.2004 in Appeal No. 228 of 1997.

2. The sole ground on which the present application is made is that the amendment has been

verified not by the petitioner himself but it has been verified by the constituted attorney of the petitioner and the constituted attorney is not entitled to verify the petition which has been filed by the petitioner because the grant which has been sought in the petition is not a limited grant but the full grant.

3. The learned counsel appearing for the defendant in support of the chamber summons has inter alia relied upon the provisions of Section 241 of the Indian Succession Act, 1925 and High Court (Original Side) Rule 379 and it has been contended that a constituted attorney can only apply for a limited grant. Once the present petition is converted for full grant by petitioner himself being joined as a party petitioner, the constituted attorney could not verify the petition and either the petitioner himself should reverify the petition or else the amendment by which the full grant is sought has to be struck out or rejected.

4. In my opinion, the aforesaid contention is without any merit. The provisions of section 241 apply only when the constituted attorney or an agent applies for grant in their own name as constituted attorney or agent. It does not apply to the cases where the constituted attorney is verifying the

petition o behalf of the petitioner who himself is a legal heir and not the attorney or the agent. Thus, reliance placed on section 241 in the facts and circumstances of the present case is not correct.

5. In so far as rule 379 is concerned, it merely provides that the petition filed by the petitioner must be verified. It does not prevent or prohibit a verification of the petition by the constituted attorney. In view thereof, the verification done by the constituted attorney for and on behalf of the petitioner in respect of the amendment carried out pursuant to the appeal court’s order is legal and valid. The chamber summons is therefore required to be rejected. The same is dismissed accordingly. The remaining prayers of the chamber summons are not pressed by the learned counsel for the defendant.